

MIKIHIRO *et al.*, SN 09/937,842
Amdt. dated 03/30/2005
Reply to OA mailed 12/30/2004

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REMARKS

This Amendment is responsive to the Office Action identified above, and is further responsive in any other manner indicated below.

NON-CONSIDERATION OF IDS - TRAVERSED

Applicant's previously-submitted information disclosure statement has been refused consideration, because of an alleged lack of concise explanation of relevance. **Strong traversal is appropriate as there is no basis for denying entry.** More particularly, in accordance with 37 CFR §1.97(a)(3)(i), page 1 of the English language version of Applicant's specification discusses the relevance of the cited reference. For convenience, submitted herewith is another copy of Applicant's Form PTO-1449 listing the reference, and Applicant respectfully requests return of an Examiner-initialed copy indicating that the information (*i.e.*, reference) has been considered. Applicant respectfully thanks the Examiner in advance for such consideration.

PENDING CLAIMS

Claims 1-16 were pending in the application, under consideration and subject to examination at the time of the Office Action. **Unrelated to any prior art, scope or rejection,** appropriate claims have been amended, added or deleted (without prejudice or disclaimer of any scope or subject matter) in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, the amendments to the claims are unrelated to any prior art or scope adjustment, and are simply clarified claims in

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which Applicant is presently interested. For example, the features/limitations of Claim 2 were substantially presented in Claims 1 and 4, and accordingly, Claim 2 was canceled (without prejudice or disclaimer). As well, Claims 1 and 4 were amended to include the features/limitations somewhat similar to those of the more detailed Claim 8. The features/limitations of Claims 14-16 are substantially included in various other ones of the original and new claims, and accordingly, Claims 14-16 were canceled (without prejudice or disclaimer). New Claim 17 substantially recites the features/limitations canceled (without prejudice or disclaimer) from Claim 1. New Claim 18 substantially recites the features/limitations canceled (without prejudice or disclaimer) from Claim 4. New Claims 19-27 include features/limitations supported throughout the application as filed, *e.g.*, at page 85, line 25 through page 89, line 5, with new Claims 23 and 27 including an alternate relative position of the stopper claw. New Claim 28 and 29 include features/limitations supported throughout the application as filed, *e.g.*, at page 82, line 26 through page 84, line 10.

At entry of this paper, Claims 1, 3-13 and 17-30 are now pending in the application for consideration and examination.

REJECTIONS UNDER 35 USC § 103 - TRAVERSED

All 35 USC rejections are respectfully traversed. Unrelated to any prior art, scope or rejection, Claims 2 and 14-16 are canceled herein (without prejudice or disclaimer), which has rendered the rejections of such claims and traversal arguments therefor obsolete at this point in time. Based upon the following,

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reconsideration and withdrawal of the remaining rejections are respectfully requested.

All descriptions of Applicant's disclosed and claimed invention, and all descriptions and rebuttal arguments regarding the applied prior art, as previously submitted by Applicant in any form, are repeated and incorporated herein by reference. Further, all Office Action statements regarding the prior art rejections are respectfully traversed.

More particularly, Applicant's clarified claims are now directed toward (broader) versions of the Claim 8 embodiment. Specifically, Applicant's present focus is on the FIGs. 6(a)-6(c), 7(a)-7(c), 40, 41, 42(a) and 42(b) embodiments having an access opening provided along one side of the probe holders, *i.e.*, note that the example embodiment has a "C" cross-sectional shape. Such an access opening allows access to a central hollowed area of the probe holder's generally cylindrical shape, and has been found to be very advantageous in terms of adjusting/clearing individual probes.

For example, FIG. 6(a) illustrates an array of probe holders. To understand the advantage, assume that probes are inserted into each of the eight probe holders and the entire array is applied against a person's scalp, and that one of the probes encounters unacceptable contact due to intervention of the person's hair between the probe and the person's skin. If the probe holders were to be provided as solid, the entire array would have to be moved (*e.g.*, removed/re-applied) in an attempt to improve contact of the probe. Such may or may not improve, and may even degrade, contact of other ones of the probes, *i.e.*, it is a hit-or-miss operation. In

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contrast, with a probe holder having Applicant's access openings, a technician could simply reach through the opening of the affected probe holder to clear the probe (without disturbing the array or other probes).

In terms of claim language, Applicant's clarified independent Claim 1, for example, recites (in part), "the optical fiber fixing member is a hollow cylinder having an access cut out portion extending along at least a partial longitudinal length thereof." Independent Claim 4 has similar limitations. Added independent Claim 30 more broadly recites "the optical fiber fixing member is a hollow member having an access cut out portion extending along at least a partial longitudinal length thereof."

Turning now to rebuttal/preclusion of the previously applied art, it is respectfully submitted that no reference or combination of such references would have disclosed or suggested Applicant's clarified claims, because none of the references disclose or suggest a hollow probe holder member having an access cut out portion.

In addition to the foregoing, the following additional remarks from Applicant's foreign representative are also submitted in support of traversal of the rejection and patentability of Applicant's claims.

The feature of permitting rocking of the measurement probe integral with the movement of the subject by means of the measures is illustrated, for example, in FIGs. 2, 10, 19 and 20. Maki *et al.* nowhere discloses such shell plate rockable feature without optical fiber contact position displacement. Additionally, an important feature of the present invention, originally defined in original Claim 8, has been incorporated into Claims 1 and 4, respectively.

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According to the present invention, through the provision of the partial cut out in the probe holder, the hair avoiding jig or the air blower can be applied through the cut out portion so as to avoid or displace a hair possibly caught between the optical fibers and the skin of the subject. Further, through the cut out portion, the top end of the probe can be observed, whereby a proper setting can be effected while confirming the attachment state of the probe.

Maki *et al.* nowhere discloses any specific measurement probe structure.

Yamashita *et al.* appears to disclose a cylindrical shaped probe holder with a hole for receiving an optical fiber, but nowhere discloses the cut out portion for facilitating displacement of hair possibly located between the optical fiber and the skin of the subject, as illustrated, for example, in FIGs. 6(a), 7(a), 9, 11(b), 40, 41 and 42(b) of the present application.

Moreover, Claim 6 defines such structure as illustrated, for example, in FIGs. 2, 10, 19 and 20, and Claim 7 defines such structure as illustrated, for example, in FIGs. 12, 13, 14 and 15. Yamashita *et al.* nowhere discloses such structures.

Claim 5 defines such structure as illustrated, for example, in FIG. 22. However, in Swanson *et al.*, the movement in a horizontal direction indicates sample scanning direction, which is totally different from the structure of Claim 5.

Claim 9 defines such structure as illustrated in FIG. 9. However, the reference to Chance simply discloses a hairbrush-type probe, and nowhere discloses the above-defined structure. Further, Chance nowhere suggests means to displace hair.

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Claim 10 is directed to the structures as, for example, illustrated in FIGs. 40, 41 and 57. Einzig merely discloses a catheter 250 with a balloon 270 which can be expanded by compressed air, which is totally different from present invention as defined in Claim 10.

Claim 11 defines the structure such as illustrated, for example, in FIG. 44, in that inclusion of a pressure sensor monitoring the contacting pressure or pushing pressure of the optical fiber is defined. To the contrary, Sun *et al.* discloses simply an optical sensor capable of measuring surface pressure, which is totally different from the present invention as defined in Claim 11.

Claim 12 defines structure as illustrated, for example, in FIGs. 45, 46 and 47, including light beam shielding. Benaron *et al.* nowhere discloses such light beam shielding.

Claim 13 defines such structure as illustrated in FIG. 5. The portion of Maki *et al.* quoted in the Office Action simply indicates use of resilient sponge on the subject contact surface. Accordingly, Maki *et al.* does not disclose the structure of Claim 13.

As a result of all of the foregoing, it is respectfully submitted that the applied art would not support either a §102 anticipation-type rejection or a §103 obviousness-type rejection of Applicant's claims. Accordingly, reconsideration and withdrawal of such §§102 and 103 rejections, and express written allowance of all of the rejected claims, are respectfully requested.

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RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer of any scope or subject matter. Further, Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

EXAMINER INVITED TO TELEPHONE

The Examiner is invited to telephone the undersigned at the local D.C. area number 703-312-6600, to discuss an Examiner's Amendment or other suggested action for accelerating prosecution and moving the present application to allowance.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are in condition for allowance. Accordingly, early allowance of such claims is respectfully requested.

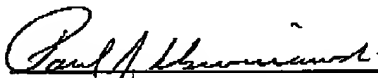
This Amendment is being filed within the shortened statutory period for response set by the 30 December 2004 Office Action, and therefore, no Petition or

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extension fee is required. To whatever other extent is actually necessary, Applicant respectfully petitions the Commissioner for an extension of time under 37 CFR §1.136. A Form PTO-2038 authorizing payment of the additional claims fees required for entry of this paper is submitted herewith. Please charge any actual deficiency in the required fee to ATS&K Deposit Account No. 01-2135 (as Case No. 983.40662X00).

Respectfully submitted,



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Attachments:

PTO-1449 Equivalent
PTO-2038 (Fee Code 1202)